IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.945 OF 1988

The State of Maharashtra)
(At the instance of Special Land)
Acquisition Officer No.16, Kolhapur).)...Appellant

Versus

Shamrao Ganpatrao Mandalik,)
(since deceased through his legal)
representatives):)

1. Shri Ranjitsinh Shamrao Mandalik,)
2. Shri Ratnakar alias Kirtiraj)
Shamrao Mandalik,)
3. Kum.Rajkuwar Shamrao Mandalik,)
4. Smt.Padmaja Manohar Desai,)
5. Sau.Alka Krishnarao Sankpal,)
6. Sau.Amrutkuwar Nivasrao Jagrap,)
7. Sau.Sanyogita Anil Gadre,)
8. Sau.Shailaja Uday Bhosale.)...Respondents

Shri S.N.Gawade, A.G.P for the Appellant.

Shri S.M.Kazi for the Respondent Nos.1 to 5, 7 and 8.

CORAM : ABHAY S. OKA, J.

DATE : JANUARY 09, 2007.

JUDGMENT:

1. Heard Advocates appearing for the parties. By the impugned Judgment and Award dated 24th September, 1987 passed by the learned Additional District Judge, Kolhapur, a reference made at the instance of the Respondents under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of

1894) has been allowed.

2. The acquisition relates to the land bearing R.S.No.382/B of Kasba Karveer, Taluka Karveer, District Kolhapur. A notification under section 126(2) of the Maharashtra Regional and Town Planning Act, 1966 read with section 6 of Land Acquisition Act, 1894 was issued on 28th November, 1974 which was published in official gazette on 02nd January, 1975. The Award was made on 11th July, 1983 under section 11 of the said Act of 1894. By the said Award the Special Land Acquisition Officer-16, Kolhapur recorded that area of the acquired land was 2 Ares and he awarded market value of Rs.1.15/- per Are to the acquired land. The claim filed by the Respondents under section 9 of the said Act of 1894 was in the sum of Rs.13,000/-.

3. By the impugned Judgment and Award, the learned Trial Judge has fixed the market value of Rs.3/- per sq feet and has granted statutory benefits.

4. The learned A.G.P submitted that reliance was placed by the Respondents on the Award at Exhibit 20 where material date was 27th August, 1981 and in the present case the material date was 28th November, 1974.

He submitted that the document at Exhibit 20 could not have been relied upon by the Respondents. He submitted that no legal evidence was led by the Respondents. The learned Advocate for the Respondents submitted that in the Award at Exhibit 20 market value for a similarly situated land was fixed at Rs.6/- per sq feet and in the present case, the market value was fixed at Rs.3/- per sq feet. He submitted that no interference was called for.

5. I have perused the impugned judgment and record of the case. By filing a pursis before the Trial Court, parties agreed that evidence led in Land Reference No.58 of 1983 should be read in the present reference. The Respondent No.3 was examined in the said Land Reference No.58 of 1983. In paragraph No.3 of his deposition he has stated that the acquired land was converted into non-agricultural land and it was having a road frontage. He stated that there were plots of Tara Rani Housing Co-operative Society Limited to the North of the acquired land and there were two residential colonies on the East of the acquired land. On the eastern side of the acquired land, there was a colony by the name Mali Colony where Rajaram College and Shivaji University Campus are situated. He stated

that on the southern side of the acquired land, there was a colony of the State Transport. He stated that abutting the colony of State Transport, there is a land bearing Regular Survey No.377 which was acquired for public purpose and the Award made was produced at Exhibit 20. Perusal of the cross-examination shows that there is hardly any challenge to the aforesaid statements made by the Respondent No.3 in his examination-in-chief as regards the location of the acquired land.

6. Perusal of the Award at Exhibit 20 shows that the same pertains to land bearing Regular Survey No.377 of Kasba Karveer, Kolhapur. The situation and description of the land bearing Regular Survey No.377 incorporated in Award at Exhibit 20 is consistent with the version of the Respondent No.3. As pointed out earlier, the relevant date in case of said Award is 27th August, 1981. By the said Award the Special Land Acquisition fixed by the market value at Rs.6/- per sq feet. Perusal of the evidence of the Respondent No.3 and the situation of land described in Award at Exhibit 20 shows that the acquired land as well as land bearing R.S.No.377 are certainly comparable lands. Both the lands are situated in the heart of the city of

Kolhapur. What the learned Trial Judge has done is that he has taken market value of Rs.6/- per sq feet as of the year 1981 for a similarly situated land and on the said basis, for the acquired land, market value at the rate of Rs.3/- per sq feet has been fixed as of the year 1974. The total market value awarded is Rs.8,450/- with statutory benefits.

7. Considering the location of the acquired land as reflected from the evidence of the third Respondent, the rate of Rs.3/- per sq feet fixed by the Trial Court does not appear to be unreasonable. In the case of **Krishna Yachendra Vs. Special Land Acquisition Officer (AIR 1979 Supreme Court Page 869)**, the Apex Court held that estimation of market value depends largely on evaluation of many imponderables. The Apex Court held that the estimation of the market value must necessarily be to some extent a matter of conjecture or guess. In the case before the Apex Court arising out of an Award made under section 18 of the said Act of 1894, market value of a land which was comparable to the acquired land as on 18th April, 1946 was established to be Rs.6/- per sq.yard. The Apex Court held that as on 30th October, 1951 market value can be reasonably taken to be Rs.9/- per sq. yard.

8. Thus, so far as determination of market value is concerned, I find no error in the impugned Judgment. The Award under section 11 has been made on 11th July, 1983. Hence, there is no error in grant of statutory benefits.

9. Hence, I pass the following order:

(i) Appeal is dismissed.

(ii) The Appellant will pay costs of the Appeal to the Respondents.

JUDGE